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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1955

No. 765

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, et al.,
Petitioners,

vs.

TRANS WORLD AIRLINES, INC.,
a corporation,
Respondent.

BRIEF OF PETITIONER, CITY AND COUNTY OF SAN FRANCISCO, IN REPLY TO BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

I.

INTRODUCTION; REASON FOR FILING.

Petitioner, in reply to Respondent's Brief in Opposition to Petition for a Writ of Certiorari (hereinafter referred to as Respondent's Brief in Opposi-

tion), files this brief under Rule 24, subparagraph 4, Revised Rules of the United States Supreme Court.

The respondent cites two decisions of this Court which, although decided on February 27, 1956, were not available to Petitioner in time to be discussed in the Petition for Writ of Certiorari, filed on March 14, 1956. Those cases are *Federal Power Commission v. Sierra Pacific Power Company,* ..... U.S. ....., 100 L.ed. (Adv. p. 300), and *United Gas Pipe Line Company v. Mobile Gas Service Corporation,* ..... U.S. ....., 100 L.ed. (Adv. p. 291).

II.

CASES CONSTRUING THE NATURAL GAS ACT OR THE FEDERAL POWER ACT ARE NOT IN POINT.

The case entitled *United Gas Pipe Line Company v. Mobile Gas Service Corporation,* ..... U.S. ....., 100 L.ed. (Adv. p. 291), is a construction of the powers of the Federal Power Commission and its procedures under the Natural Gas Act, 52 Stat. 821, 15 U.S.C. §§717, et seq. In footnote 9, pages 15 and 16, of Respondent's Brief in Opposition, language is quoted from *United Gas Pipe Line Co. v. Mobile Gas Service Corporation* (supra) which, in distinguishing the Natural Gas Act from the Interstate Commerce Act, is to the effect that the few wholesale transactions regulated by the Natural Gas Act typically require substantial investment in facilities. The only investment required of an airline to make use of common use facilities at the San Francisco International Air-

port is in the right to operate an aircraft. All operators of aircraft, whether scheduled or nonscheduled, air carriers, or private operators, many planes or one, have a right to use the common use facilities at the airport, subject to payment of a reasonable charge. (Federal Airport Act, 49 U.S.C. 1110, Respondent's Brief in Opposition, Appendix p. xvii.) There is no investment on the part of an airline in the common use facilities, for these are supplied by the City and County of San Francisco with taxpayers' money. True, an airline may make an investment in base facilities for its own use, but Petitioner does not make the contention that that portion of the agreement between Trans World Airlines and Petitioner, granting to Trans World Airlines airport facilities not used in common with other operators of aircraft, is subject to utility rate regulation. Factually, when this case was heard in the District Court, Petitioner had no investment in base facilities at the Airport. (R. p. 15, par. 1.) This case is therefore not in point in deciding questions arising under provisions in the California Constitution and the Charter of the City and County of San Francisco, which provisions are wholly dissimilar to those of the Natural Gas Act.

On page 8 of Respondent's Brief in Opposition the case of *Federal Power Commission v. Sierra Pacific Power Company*, ___ U.S. ___, 100 L.ed. (Adv. p. 300), is cited to sustain the footnote proposition that City could not affect the contract with Trans World Airlines by its own unilateral action in filing

a new "Schedule of Rates." That proposition ignores the fact that the schedule of rates and charges of November 20, 1950, as well as the prior schedules of June 23, 1941 and November 25, 1946 were adopted after published notice of hearing, and hearing at which all interested parties had an opportunity to be heard (R. pp. 622-625), in accordance with the Charter of the City and County of San Francisco, section 130. (Appendix, pp. iii-iv.) It also ignores the legal controversy in *Federal Power Commission v. Sierra Pacific Power Company,* supra, in that only procedural requirements before the Federal Power Commission and powers of that body under Title II of the Federal Power Act (49 Stat. 847, 16 U.S.C. §§284, et seq.) were in issue there.

No confusion should arise by reason of the coincidence that the rate-fixing body in this instance happens to be the Public Utilities Commission, also having jurisdiction over the utility itself. In the exercise of its rate-fixing power, the Public Utilities Commission of the City and County of San Francisco is acting as a public rate-fixing body even though it is at the same time engaged in a function as the operator of the utility. (Charter of City and County of San Francisco, §§121 and 130; Appendix, pp. i-iv; Cf. *Connett v. City of Jerseyville* (C.C.A. 7, 1940), 110 Fed. 2d 1015, 1019.)

CONCLUSION.

Neither *Federal Power Commission v. Sierra Pacific Power Company,* supra, nor *United Gas Pipe Line Co. v. Mobile Gas Service Corp.,* supra, are in point in this case. The differences between the Interstate Commerce Act and the Natural Gas Act discussed in the *United Gas Pipe Line* case and noted above, seem only to strengthen the Petitioners' carrier-shipper analogy to the relations between airport operators and aircraft operators.

Dated, San Francisco, California,
April 11, 1956.

Respectfully submitted,

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(Appendix Follows.)

Appendix

CHARTER, CITY AND COUNTY OF SAN FRANCISCO.

GENERAL POWERS AND DUTIES OF COMMISSION.

"Section 121. The public utilities commission shall have charge of the construction, management, supervision, maintenance, extension, operation and control of all public utilities and other properties used, owned, acquired, leased or constructed by the city and county, including airports, for the purpose of supplying any public utility service to the city and county and its inhabitants, to territory outside the limits of the city and county, and to the inhabitants thereof.

The commission shall locate and determine the character and type of all construction and additions, betterments and extensions to utilities under its control, and shall determine the policy for such construction or the making of such additions, betterments and extensions from the public funds under its jurisdiction; provided that in each such case it shall secure the recommendation of the manager of utilities, which shall be presented in writing and shall include analyses of cost, service and estimated revenues of all proposed or feasible alternatives in cases where it is deemed by the manager that such alternatives exist.

The commission shall also have power to enter into contract for the furnishing of heat, light and power for municipal purposes, and to supervise the performance and check the monthly bills under such contract.

The Commission shall have full power and authority to enter into such arrangements and agreements as it shall deem proper for the joint use with any other person, firm or corporation, owning or having jurisdiction over poles, conduits, towers, stations, aqueducts, reservoirs and tracks for the operation of any of the utilities under its jurisdiction. It may make such arrangements as it shall deem proper for the exchange of transfer privileges with any privately owned transportation company or system which shall tend toward the betterment of transportation service.

The commission shall observe all city and county ordinances and the regulations of the department of public works relative to utility openings, structures and poles in streets and other public places, as well as all ordinances and regulations relative to barricades, construction lights, refilling excavations and replacing and maintaining street pavements; and in connection with all such matters the said commission shall be subject to the same inspection rules and pay fees to the proper department in the same manner and at the same rates as any private person or corporation.

The commission shall have charge of all valuation work relative or incidental to purchase proceedings initiated by the city and county for the acquisition of any public utility.

Foreign trade zones, as may be authorized by acts of Congress to be located in the city and county, are hereby declared to be public utilities within the meaning of this charter. A bonded indebtedness for the

construction, completion or acquisition of foreign trade zones and the acquisition of necessary lands, buildings and equipment authorized by the electors in accordance with the provisions of this charter shall be exclusive of the bonded indebtedness of the city and county limited by this charter."

RATES.

"Section 130. The commission shall have power to fix, change and adjust rates, charges or fares for the furnishing of service by any utility under its jurisdiction, and to collect by appropriate means all amounts due for said service, and to discontinue service to delinquent consumers and to settle and adjust claims arising out of the operation of any said utilities.

Rates may be fixed at varying scales for different classes of service or consumers. The commission may provide for the rendition of utility service outside the limits of the city and county and the rates to be charged therefor which may include proportionate compensation for interest during the construction of the utility rendering such service.

Before adopting or revising any schedule of rates or fares, the commission shall publish in the official newspaper of the city and county for five days notice of its intention so to do and shall fix a time for a public hearing or hearings thereon, which shall be not less than ten days after the last publication of said notice, and at which any resident may present his objection to or views on the proposed schedule of rates, fares or charges.

Rates for each utility shall be so fixed that the revenue therefrom shall be sufficient to pay, for at least the succeeding fiscal year, all expenses of every kind and nature incident to the operation and maintenance of said utility, together with the interest and sinking fund for any bonds issued for the acquisition, construction or extension of said utility; provided that, should the commission propose a schedule of rates, charges or fares for said utility which shall not produce such revenue, it may do so with the approval of the board of supervisors, by a two-thirds vote and it shall thereupon be incumbent to provide by tax levy for the additional amount necessary to meet such deficit. All other changes in rates, charges or fares as proposed by the commission shall be submitted by the commission to the board of supervisors for approval, and, except as in this section otherwise provided, it shall require a two-thirds vote of the board of supervisors to reject the rate changes as proposed by the commission, and if so rejected, such proposed changes in schedules of rates, charges or fares shall be returned to the commission for revision. If the supervisors shall fail to act on any such proposed schedule within thirty days, the schedule shall thereupon become effective."